IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE TWENTY FIRST DAY OF APRIL
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE K.C. BHANU

WRIT PETITION NO : 925 of 2005

Between:

Sri Vemula Rama Rao S/o Suryanarayana
PACS L.B. Charla, narasapur Mandal, West Godavari District

..... PETITIONER

AND

1 The District Co-operative Officer, Eluru, West Godavari District
2 The Deputy Registrar of Co-operative Societies, Bhimavaram, West Godavari District
3 The L.B. Cherla Primary Agricultural Co-operative Credit Society Ltd., L.B. Cherla, rep by Chair Person L.B. Cherla, Narsapur Mandal West Godavari District

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to order, direction more particularly one in the nature of writ of Mandamus declaring the action of the respondents in not completing the enquiry against the petitioner is illegal arbitrary and contrary to the By-Law No. 12 (3) (C) and contrary to the observation made by this Hon'ble Court in W.P. No. 24549/2003 dt 20-0802004 and consequentially direct the respondent to reinstate the petitioner into service forthwith and pay all the consequential benefits to the petitioner and to pass such further order or orders.

Counsel for the Petitioner: MR.P.R.K.AMERANDRA KUMAR

Counsel for the Respondents 1 & 2: GP FOR COOPERATION

Counsel for the Respondent No.3: Mr. K. Chidambaram

The Court at the admission stage made the following :

The Hon'ble Sri Justice

K.C. Bhanu

W.P. No. 925 of 2005

O R D E R:

The writ petition is filed challenging the action of the respondents in not completing the enquiry against the petitioner as illegal and arbitrary and contrary to bye-law No.12 (3) (c) and contrary to the observation made by this court in W.P.24549 of 2003 dated 20.8.2004 and consequently to direct the respondent to reinstate the petitioner into service forthwith.

The brief facts that are necessary for the disposal of this case are as follows:

The petitioner was appointed as Secretary under Rule 72 of the A.P. Cooperative Rules. Later he was transferred to 3rd respondent-society in the year 1984. The 1st respondent in his proceedings dated 25.7.2002 by virtue of the powers under G.O.Ms.No.34 ordered enquiry under Section 51 of the A.P.C.S. Act for the financial position of 3rd respondent-society. In pursuance of the said direction an Enquiry Officer conducted enquiry and submitted a report to the 1st respondent. During the course of enquiry the Enquiry Officer pointed out some financial irregularities committed by the person-in-charge of the society. The term of the elected managing committee expired by 25.7.2000. Then the authorities appointed a person-in-charge committee. During the course of enquiry it came to light that the managing committee as well as the Accountant were responsible for misappropriation of the funds. The committee placed the petitioner under suspension by its order dated 8.11.2003. The order of the 3rd respondent is non est in the eye of

law. Therefore the petitioner approached this court by filing W.P. 24549 of 2003 wherein this court directed the respondents to complete the enquiry as expeditiously as possible within three months from the date of receipt of a copy of the order. Basing on the enquiry report the 3rd respondent issued a show-cause notice asking for explanation for which he submitted explanation. Hence the present writ petition.

The 2nd respondent filed counter stating that an enquiry under Section 51 of the A.P. Cooperative Societies Act was ordered into the affairs of the 3rd respondent-society. The Enquiry Officer conducted the enquiry and submitted that an amount of Rs.34,92,956/- was misappropriated and fixed the liability on the Ex-Board of Management and Accountant of the Society. Therefore the petitioner committed misappropriation of the funds of the society. The 2nd respondent while forwarding the enquiry report to the society for follow-up action has directed the Board Management of the Society to take disciplinary action against the petitioner and accountant of the Society for their involvement in misappropriation. Basing on the same, the 3rd respondent issued a show-cause notice for which the petitioner submitted explanation. As the explanation was not satisfactory, the petitioner was suspended by the 3rd respondent and the 3rd respondent has to complete the disciplinary proceedings and, therefore, the petitioner is not entitled for any relief.

The 3rd respondent-society filed counter affidavit stating that the writ petition filed by the petitioner is not maintainable insofar as the relief claimed against the 3rd respondent is concerned. The petitioner is not entitled for the relief of reinstatement since the same was dismissed by this court and further action will be taken against the petitioner in accordance with law. Hence, the 3rd respondent prays to dismiss the writ petition.

Learned counsel for the petitioner contended that as per Special Bye-law No.3, no employee can be suspended for a period of

more than six months and earlier this court also directed the respondents to complete the enquiry as expeditiously as possible within three months from the date of receipt of a copy of the order and hence he prays to allow the writ petition.

On the other hand, learned Government Pleader for respondents 1 and 2 contended that it is for the 3rd respondent to complete the enquiry in accordance with the Special Bye-laws and the Government is nothing to do with the enquiry of the 3rd respondent.

Learned counsel for the respondent No.3 contended that the Special Bye-laws have no statutory force and in accordance with law the enquiry will be completed by the Enquiry Officer and hence there are no grounds to grant any relief as sought for by the petitioner.

The person-in-charge committee vide its proceedings dated 8.11.2003 suspended the petitioner from the post Secretary of the Society on the ground that during the course of enquiry under Section 51 of the Act there was a finding that there was misappropriation of the funds of the society and for that purpose a show-cause notice was issued on 20.10.2003 for which the petitioner gave explanation, which was not satisfactory. Challenging the proceedings of the 3rd respondent dated 8.11.2003, the petitioner filed W.P. 24549 of 2003 before this court. The said petition was dismissed but an observation was made directing the respondents to complete the enquiry as expeditiously as possible within a period of three months from the date of receipt of a copy of the order. A categorical finding has been recorded by this court to the effect that the 3rd respondent is equally empowered to place the services of the petitioner under suspension. Therefore, the petitioner cannot re-agitate the same before this court stating that the order of the 3rd respondent dated 8.112.2003 is non est in the eye of law and is liable to be set aside on the ground of lack of power and jurisdiction. Now

the relief sought for in this writ petition is to declare the action of the respondents in not completing the enquiry as contrary to Bye-Law No.12(3)(c) and contrary to the observations made by this court with a consequential direction to reinstate the petitioner into service.

The bye-laws of the Cooperative Society are not having statutory force. To that effect learned counsel for the respondent No.3 relied upon a decision in **V.P. Rama Rao v. District Cooperative Officer/Registrar, Vizayanagaram** wherein it is held:

> "The Bye-Laws of the 2nd respondent Bank are neither statutory nor have a statutory flavour. The 2nd respondent-Bank is neither pleaded, urged or demonstrated to be an Agency or instrumentality of the State. The service relationship between the petitioner and the 2nd respondent-Bank does not fall to be considered by this court in exercise of its jurisdiction u/Art.226 of the Constitution because no constitutional or public law obligations are owed by the 2nd respondent to the petitioner qua the service relationship between them".

He also relied upon a decision of a Division Bench of this court in **Ch. Ankamma v. Registrar of Cooperative Societies, Hyderabad** wherein it is held:

> "In view of the fact that the Special Bye-laws in question do not have the force of a statute, we are of the opinion that violation thereof would not render the order of termination invalid".

Since the grievance of the petitioner is that the respondents are not completing the enquiry which is contrary to Bye-Law No. 12(3)(c), the violation thereof would not render the suspension order invalid or illegal. Therefore, the relief sought for cannot be granted. It is not a case where the mandatory provisions of

the statute or the statutory rules are violated in not completing the enquiry. If the directions of this court have not been implemented so as to complete the enquiry, the remedy is otherwise but not filing writ petition.

Therefore, viewed from any angle the writ petition is totally devoid of merit and it is accordingly dismissed. In the circumstances, no costs.

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K.C. Bhanu, J.

Date: --04—2005.

MVB.

..... REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1 The District Co-operative Officer, Eluru, West Godavari District
2 The Deputy Registrar of Co-operative Societies, Bhimavaram, West Godavari District
3 The Chair Person, L.B. Cherla Primary Agricultural Co-operative Credit Society Ltd., L.B. Cherla, Narsapur Mandal, West Godavari District

4. Two C.Cs. to the G.P. for Cooperation, High Court Buildings, Hyderabad (OUT).

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